NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

CARLTON-MICHAELS CORP.,	)	
	)	
Plaintiff,	)	
	)	CIVIL NO. 1997-55
v.	)	
	)	
PAX HOLDINGS, INC.,	)	
	)	
Defendant.	)	
	)	

APPEARANCES:

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Memorandum Opinion

Finch, C. J.

This matter is before the Court for a decision on the merits following a bench trial conducted on April 5, 2000. The Court, having considered the testimony of witnesses, the exhibits and depositions[1] offered into evidence at trial, and the arguments of counsel, now enters

[1] At trial, PAX, rather than present witnesses, entered its entire case by deposition. Without objection from Michaels, PAX entered into evidence the following depositions: Dep. of Robert J. Greer, dated 1/20/99; Dep. of Robin Reed Peters, dated 1/19/99; Dep. of John McCallum, dated

this Memorandum Opinion as its Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52.

Findings of Fact

1. PAX, Holdings, Inc. ("PAX") and MJL Acquisition Corp. (now Carlton-Michaels Corp. and hereinafter "Michaels") entered into an "Option to Purchase Real Property" (the "Option Agreement"). The Option Agreement was executed on or about April 7, 1994 but was dated and effective from February 1, 1994.[2]

2. The relevant features of the Option Agreement include the following:

a) In consideration of the payment of $10,000, Michaels was given the right, but not the obligation, to purchase approximately 13.76 acres, at Plot Nos. 58, 30, 29 and 147 Estate Carlton, St. Croix, U.S. Virgin Islands (the "Property") for the sum of $475,000, such right to exist for a four-month period commencing February 1, 1994 and ending June 1, 1994.[3]

b) Thereafter, Michaels could extend its option for a maximum of twenty months by paying $3,000 for every month by which it wished to extend the Option Agreement. The total due from Michaels for the entire twenty-four-month option period was $70,000.[4]

c) In order to extend the option on a month-by-month basis (for a maximum limit of twenty months in addition to the original four-month term), Michaels was to deliver its

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3/31/00; and Dep. of John McCallum, dated 1/22/99. See Trial Tr. p. 203-204.
[2] Option Agreement, dated February 1, 1994.
[3] Id., Paragraph 1.
[4] Id., Paragraph 2.

notice of renewal together with a check in the amount of $3,000 for each month it desired to renew or extend the option term. Notice and payment were due prior to the expiration of any prior term or extension thereof.[5]

d) Michaels could exercise its option to purchase at any time during the term of the Option Agreement by delivering written notice of its election together with a check in the amount of $47,500 as a non-refundable deposit.[6]

e) Under the Option Agreement as originally executed, all payments received were non-refundable but would be applied against the purchase price of the Property at closing in the event Michaels exercised its option.[7]

f) Closing would take place within thirty days of Michaels' exercise of its option, with an additional ninety days allowed to close if necessary to deliver marketable value.[8]

g) Time was of the essence of the Option Agreement.[9]

h) Michaels was obliged under the Option Agreement to perform all surveys, drawings and other work necessary to obtain a proper legal description for the Property and to obtain registration of all necessary Public Works Drawings.[10]

i) Michaels acknowledged and agreed that it had an adequate opportunity to inspect the Property and agreed that it would accept the Property, with all faults,

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[5] Id., Paragraph 2.
[6] Id., Paragraph 3.
[7] Id., Paragraph 4.
[8] Id., Paragraphs 5(a) and (f).
[9] Id., Paragraph 10.
[10] Id., Paragraph 15.

dangerous conditions or defects, patent or latent. Michaels further acknowledged and agreed that PAX made no warranties whatsoever concerning the condition of the Property or its suitability for use for any particular purpose intended by Michaels either by virtue of its physical properties or by virtue of any laws, rules, regulations or rulings of any governmental agency.[11]

j) The written Option Agreement set forth the entire agreement between the parties, and could not be altered, modified or amended except by a written instrument signed by both Michaels and PAX.[12]

3. Notwithstanding the clear mandatory payment provisions required under the Option Agreement to extend the term of the option, Michaels was consistently late in making payments. Although the arrearage varied between one and three months on average, Michaels was consistently one month late during the final months of the initial twenty-four-month term of the Option Agreement. PAX was aware of this practice and allowed it to continue without formal objection.[13]

4. The Option Agreement expired by its own terms on February 1, 1996. Upon expiration, Michaels had paid to PAX the sum of $67,000, some $3,000 less than the agreed price of the initial twenty-four-month option term pursuant to the written agreement.[14]

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[11] Id., Paragraph 6.
[12] Id., Paragraph 9.
[13] Def.'s Ex. G; Dep. of Robert J. Greer, 1/20/99, p. 34, ll. 3-9, p. 36, l. 23 – p. 38, l. 5; Dep. of John B. McCallum, 1/22/99, p. 39, l. 11 – p.41, l. 24, p. 53, l. 21 – p. 56, l. 1; Dep. of John B. McCallum, 3/31/00, p. 30, ll. 7 – 25.
[14] Def.'s Ex. G; Dep. of Robert J. Greer, 1/20/99, p. 14, l. 17 – p. 15, l. 10, p. 34, ll. 3 – 9.

5. As of the expiration of the original twenty-four-month option period pursuant to the Option Agreement, no agreement had been reached, orally or in writing, for the extension of the option period.[15]

6. At no time was there a meeting of the minds between PAX and Michaels for any reduction in the $70,000 price originally agreed for the twenty-four-month option term. At no time did the parties execute any written agreement in modification of the Option Agreement which reduced the agreed payment of $70,000 for the original twenty-four-month option term.[16]

7. During the entire period in which the Option Agreement was in force, including later extensions thereof, Michaels made payments to PAX by check drawn on Michaels Development Company bearing the following dates and in the following amounts:[17]

	Date of Check	Amount in Dollars
1.	04/05/94	$10,000
2.	09/13/94	3,000
3.	10/04/94	3,000
4.	10/04/94	3,000
5.	10/04/94	3,000
6.	11/01/94	3,000
7.	12/06/94	3,000
8.	01/03/95	3,000
9.	02/02/95	3,000
10.	03/01/95	3,000
11.	04/04/95	3,000
12.	05/01/95	3,000
13.	06/01/95	3,000

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[15] The next extension of the Option Agreement was not executed until April 2, 1996. See Dep. of Robert J. Greer, 1/20/99, p. 6, l. 21- p. 8, l. 11.

[16] Trial Tr., p. 119, l. 20 - p. 120, l. 19; Dep. of Robert J. Greer, 1/20/99, p. 40, l. 12 – p. 41, l. 14.

[17] Def.'s Ex. G; Dep. of Robert J. Greer, 1/20/99, p. 34, ll. 3 – 9.

14.	07/05/95	3,000
15.	09/01/95	3,000
16.	10/02/95	3,000
17.	10/10/95	3,000
18.	11/02/95	3,000
19.	12/06/95	3,000
20.	01/ /96	3,000
21.	02/05/96	3,000
22.	04/02/96	8,000
23.	05/01/96	4,000
24.	06/06/96	4,000
25.	07/02/96	4,000

8. The $3,000 check tendered to Michaels by PAX and dated February 5, 1996 was the payment for the option extension from January 1, 1996 to February 1, 1996, i.e., the final month of the original twenty-four-month term. This check did not represent any payment made and accepted for any extension beyond the original twenty-four-month term of the Option Agreement.[18]

9. Following the expiration of the original twenty-four-month term of the Option Agreement on February 1, 1996, the parties agreed to extend the option for an additional four months as confirmed by letter agreement dated April 2, 1996. Under this written extension agreement, the monthly option payments would increase to $4,000, and would not be applied to the purchase price at closing in the event that Michaels exercised its option. This letter agreement was accompanied by a check for $8,000 in payment of the first two months of the extension.[19]

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[18] As previously stated, Mr. Greer, in his deposition admits that there was no express agreement to reduce the $70,000 price for the initial twenty-four-month option term. Dep. of Robert J. Greer, 1/20/99, p. 40, l. 12 – p. 41, l. 14; see also Dep. of John B. McCallum, 3/31/00, p. 8, l. 11 - p. 10, l. 12.

[19] Letter "First Amendment - Agreement of Sale," dated April 2, 1996.

10. An additional $4,000 was paid by Michaels on or about May 1, 1996 and another $4,000 paid on or about June 6, 1996, representing the additional payments on the four-month option extension, bringing the option term to June 1, 1996.[20]

11. As of the expiration of the four-month extension beyond the original twenty-four-month option period, no agreement had been reached, orally or in writing, for any further extension of the option period.

12. By undated letter transmitted on July 11, 1996, PAX acknowledged receipt of check number 1199 dated July 2, 1996 in the amount of $4,000 and confirmed that the Option Agreement would be extended for an additional two months beyond the earlier four-month extension. This brought the maximum option term to August 1, 1996, provided that Michaels made an additional $4,000 payment for the final month of the extension.[21]

13. By letter dated July 18, 1996, and received by Michaels no later than July 24, 1996, PAX informed Michaels that no further extensions of the Option Agreement would be granted and that if Michaels desired to purchase the Property it must exercise its option on or before August 1, 1996.[22]

14. By letter dated July 29, 1996, Michaels protested the notice by PAX that the option would not be extended beyond August 1, 1996. For the first time, Michaels contended that the Option Agreement did not expire until August 31, 1996. Enclosed with this letter was a check in the amount of $4,000 tendered upon the express condition that PAX agree to an additional

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[20] Def.'s Ex. G.
[21] Undated letter with fax activity report dated July 11, 1996.
[22] Def.'s Ex. D; Dep. of Robert J. Greer, 1/20/99, p. 46, l. 23 - p. 47, l. 12.

extension of the Option Agreement until December 31, 1996.[23]

15. On July 31, 1996, counsel to PAX sent a letter, by fax and mail, to Michaels stating PAX's position that if Michaels desired to purchase the Property it could exercise its option on or before the close of business on August 1, 1996.[24]

16. Had Michaels exercised its option on or before August 1, 1996 then it would have had at least until August 31, 1996 within which to complete closing.[25]

17. Michaels has alleged, and PAX accepts, that Michaels could have completed the purchase on or before August 31, 1996.[26]

18. At no time did Michaels attempt to exercise its option to purchase the Property either within the period of time specified by PAX (on or before August 1, 1996) or by the time it contended was applicable (up through and including August 31, 1996).[27]

19. At all relevant times Michaels could have sought the legal advice of its New Jersey attorneys, Levin Staller & Sklar, or its St. Croix attorney, Gerald Groner, to assist it in determining its rights under the Option Agreement and to properly exercise its option.[28]

20. A meeting took place on July 15, 1996 attended by John McCallum on behalf of PAX and Mr. Robert Greer on behalf of Michaels. No enforceable promises were made at such

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[23] Michaels letter dated July 29, 1996.
[24] Def.'s Ex. F.
[25] Option Agreement, Paragraph 5(a).
[26] First Amended Complaint, Paragraph 22; Dep. of Robert J. Greer, 1/20/99, p. 75, l. 18 - p. 76, l. 5; p. 92, l. 3 - l. 19.
[27] Dep. of Robert J. Greer, 1/20/99, p. 76, l. 13 - l. 16.
[28] Id., p. 93, l. 21 - p. 95, l. 20.

meeting.[29] No false representations of fact were made by PAX to Michaels at such meeting.

21. Michaels has not proven any detrimental reliance or material change in position in reliance on any representations of fact or of intent allegedly made at the meeting of July 15, 1996.[30]

Conclusions of Law

A. The Option Agreement expired on August 1, 1996.

1. The Option Agreement is a contract for the sale of land and is therefore subject to the Statute of Frauds, 28 V.I.C. § 242.[31] The Option Agreement is a fully integrated agreement. Parol evidence is not admissible to contradict any term of the written agreement. Restatement

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[29] Michaels claims that at the July 15, 1996 meeting John McCallum made oral assurances to Michaels' representative Robert Greer that PAX would extend the term of the option through December 1996. PAX denies that such oral assurances were made. See Dep. of John B. McCallum, 3/31/00, p. 16, l. 1 - p. 17, l. 22. Even assuming that Michaels' version of the July 15, 1996 meeting is correct, the Court finds that any such oral agreement is barred by the statute of frauds. See Willow Brook Recreation Center, Inc. v. Selle, 233 A.2d 77, 80 (N.J. Super. Ct. 1967) (holding that oral extensions of options to lease or purchase land fall within the statute of frauds); see also Gulf Oil Corp. v. Willcoxon, 86 S.E.2d 507, 509 (Ga. Sup. Ct.1955) (same); Conklin v. Caffall, 179 So. 434, 437 (La. Sup. Ct.1938) (same); Nason v. Morrissey, 67 So.2d 506, 509 (Miss. Sup. Ct.1953) (same); Loft, Inc. v. Glen Ridge Realty Corporation, 12 N.Y.S.2d 577 (Sup. Ct.1939) (same); Gambill v. Snow, 189 S.W.2d 33 (Tex. Civ. App.1945) (same).

[30] Michaels argues that by making payment for the month of August 1996, it materially changed its position in reliance on the alleged oral assurances that the Option Agreement would be extended through December 1996. The Court disagrees. The August payment was for the term July 1, 1996 to August 1, 1996. Thus, this payment was agreed upon by the parties prior to the July 15, 1996 meeting and therefore prior to any alleged oral assurances by PAX that it would extend the option through the end of 1996.

[31] 28 V.I.C. § 242 provides: "Every contract for the leasing for a longer period than one year from the making thereof, or for the sale of any lands, or any interest in lands, shall be void unless the contract or some note or memorandum is in writing, and signed by the party to be charged, or by his lawful agent under written authority."

(Second) of Contracts § 215.

2. The Option Agreement and the two written extensions thereof constitute the only admissible evidence from which the Court may determine the expiration date of the option term. In interpreting the Option Agreement, the Court is guided by the provisions of the Restatement (Second) of Contracts § 202,[32] which provides in relevant part "[a] writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together."

3. Of particular importance is comment d to § 202. Comment d provides:

> d. Interpretation of the whole. Meaning is inevitably dependent on context. A word changes meaning when it becomes part of a sentence, the sentence when it becomes part of a paragraph. A longer writing similarly affects the paragraph, other related writings affect the particular writing, and the circumstances affect the whole. Where the whole can be read to give significance to each part, that reading is preferred; if such a reading would be unreasonable, a choice must be made. See s 203. To fit the immediate verbal context or the more remote total context particular words or punctuation may be disregarded or supplied; clerical or grammatical errors may be corrected; singular may be treated as plural or plural as singular.

Restatement (Second) of Contracts § 202 cmt. d.

4. The Court is also guided by the provisions of Restatement (Second) of Contracts § 203: "In the interpretation of a promise or agreement or a term thereof, the following standards of preference are generally applicable: (a) an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect . . . ." Restatement (Second) of Contracts § 203(a).

5. In considering these sections of the Restatement, the Court finds that in determining

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[32] Pursuant to 1 V.I.C. § 4, the Restatement is the governing law in the Virgin Islands when no other superseding authority exists.

the expiration date of the Option Agreement, the Court must interpret the Option Agreement itself and the two written extension agreements, read together. See, e.g., Williams v. Metzler, 132 F.3d 937, 947 (3d Cir. 1997); Barco Urban Renewal Corp. v. Housing Auth. of the City of Atlantic City, 674 F.2d 1001, 1009 (3d Cir. 1982); Omnisource Corp. v. CNA/Transcontinental Ins. Co., 949 F. Supp. 681, 687 (N.D. Ind. 1996); U.S. v. Hardy, 916 F. Supp. 1373, 1380 (W.D. Ky. 1995).

6. In interpreting the provisions of these three documents when read together, the Court must choose that interpretation which gives a reasonable and effective meaning to all of the terms and reject an interpretation which leaves a part unreasonable or of no effect. Restatement (Second) of Contracts § 203; see also Arnold M. Diamond, Inc. v. Gulf Coast Trailing Co., 180 F.3d 518, 522 (3rd Cir. 1999); Golden Door Jewelry v. Lloyds Underwriters, 117 F.3d 1328, 1338 (11th Cir. 1997).

7. All three writings and all of the language of the writings are easily harmonized as required by Section 203(a) by interpreting the language of the extension agreements to the effect that the April 2, 1996 letter allowed for a four-month extension with each month's extension expiring on March 1, April 1, May 1 and June 1, respectively, and that the undated letter calling for an additional two-month extension provided for an expiration date of July 1, and August 1, respectively. This interpretation does no violence to the agreements, harmonizes all of the provisions of all three of the writings which are germane to the issue, and is entirely consistent with the history of payment of the option fees.

8. In accordance with the foregoing law, the Court finds that the Option Agreement, as

originally executed, expired no later than February 1, 1996. As a fully integrated written agreement for the sale of real property it could only be modified in writing. See 28 V.I.C. § 242. The Option Agreement was modified in writing twice, first allowing an extension of four months and then allowing another two-month extension. The writings, consisting of the Option Agreement and the two written extensions, when read together and interpreted in accordance with established principles, show that the option term was extended no more than six months, until August 1, 1996.

B. Michaels failed to properly extend its option beyond August 1, 1996.

9. The two written extensions of the Option Agreement made only three changes to the Option Agreement as originally executed: (1) the option term was extended by a maximum of six months; (2) the monthly option fees were increased to $4,000; and (3) those option fees could not be applied to the purchase price at closing.

10. All other provisions of the Option Agreement remained unchanged, including the provisions for monthly extensions of the term. The Option Agreement is quite explicit as to how Michaels was to extend the term of the option on a month-to-month basis. Michaels was to tender the monthly option fee together with its notice of intent to extend the option term prior to the expiration of the preceding term.

11. After being notified that PAX would not extend the Option Agreement beyond August 1, 1996, Michaels attempted, by its letter of July 29, 1996 and the accompanying check in the amount of $4,000, to extend the option beyond that date. This attempt, even if otherwise contractually permissible, was deficient for the following reasons:

a) The $4,000 payment enclosed with the letter was necessarily in payment of the option term from July 1, 1996 through August 1, 1996, and was not a tender of an option fee beyond August 1, 1996.[33]

b) The tender of the check was made expressly contingent upon acceptance by PAX of a proposed extension of the option until December 31, 1996. In other words, Michaels was not attempting to exercise any contractual right to extend the option beyond August 1, 1996 but was merely making an unsolicited offer to extend the option term until December 31, 1996 which was not agreed to by PAX.

12. An option for the sale of real property is an agreement that an offer will remain open for a specified time. The person having the option (in this case, Michaels) has the power to convert the option to a contract for sale merely by exercising its option. The exercise of an option operates as the acceptance of the offer. See Restatement (Second) of Contracts § 25; see, e.g., Benedict v. U.S., 881 F.Supp. 1532, 1544 (D. Utah 1995).

13. In the instant case, Michaels had two options available for its exercise. It could extend the period of the option to the maximum extent permissible under the Option Agreement or it could exercise its option to purchase. In either event, its election to extend the option or to exercise the option would operate as an acceptance.

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[33] This is apparent from the payment history which shows that the preceding check, dated July 2, 1996, was in payment of the fifth month of the extension period, which necessarily expired July 1, 1996. This is consistent with the fact that Michaels customarily paid its option fees one month in arrears. The following check, therefore, could only have been in payment of the month covering July 1, 1996 through August 1, 1996. There was never any agreement that Michaels would have the benefit of an option period without payment of a fee.

14. Michaels' letter of July 29, 1996 attached an impermissible condition on its purported election to extend the option beyond August 1, 1996. By conditioning its acceptance, Michaels did not exercise any right it might have had to extend the term of the Option Agreement, but merely made an ineffective counter-offer in accordance with Restatement (Second) of Contracts § 59. Section 59 provides that "[a] reply to an offer which purports to accept it but is conditional on the offeror's assent to terms additional to or different from those offered is not an acceptance but is a counter-offer." Restatement (Second) Contracts § 59. Comment a to § 59 further explains a conditional acceptance. Comment a provides:

> a. Qualified acceptance. A qualified or conditional acceptance proposes an exchange different from that proposed by the original offeror. Such a proposal is a counter-offer and ordinarily terminates the power of acceptance of the original offeree. See s 39. The effect of the qualification or condition is to deprive the purported acceptance of effect. But a definite and seasonable expression of acceptance is operative despite the statement of additional or different terms if the acceptance is not made to depend on assent to the additional or different terms. See s 61; Uniform Commercial Code s 2-207(1). The additional or different terms are then to be construed as proposals for modification of the contract. See Uniform Commercial Code s 2-207(2). Such proposals may sometimes be accepted by the silence of the original offeror. See s 69.

Restatement (Second) Contracts § 59 cmt. a.

15. PAX did not accept this counter-offer to extend the option term, and the attempted extension of the option term was of no effect. See, e.g., Honeywell v. American Standards Testing Bureau, 851 F.2d 652, 659 (3d Cir. 1988), cert. denied, 488 U.S. 1010 (1989).

16. Michaels failed to exercise any rights it might have had under the Option Agreement, including any purported right to extend its term beyond August 1, 1996.

C. Michaels is not entitled to an award of damages.

17. Michaels is not entitled to damages under Restatement (Second) of Torts § 551 because no fiduciary relationship existed between the parties. See, e.g., Coca-Cola Bottling Co. of Elizabethtown, Inc. v. Coca-Cola Co., 696 F. Supp. 57 (D. Del. 1988) (An ordinary business relationship, or an agreement reached through arm's length negotiating, cannot be turned into a fiduciary one absent factors of mutual knowledge of confidentiality or the undue exercise of power or influence.).

18. Michaels is attempting to sue for breach of a contract to sell the Property, even though Michaels never attempted to exercise its option to purchase by giving notice of its election and tendering the required deposit of $47,500.[34] As is clear from the correspondence directed to Michaels, Michaels was given ample opportunity to exercise its option and purchase the Property. PAX made it clear that if the option was exercised on or before August 1, 1996, Michaels would be entitled to purchase the Property in accordance with the Option Agreement. Michaels was thus afforded every opportunity to obtain the Property for the agreed purchase price had it wished. Indeed, Michaels has affirmatively alleged that it could have closed the purchase of the Property by August 31, 1996.[35]

19. An injured party may not collect damages for any loss it could have avoided, as provided by Restatement (Second) of Contracts § 350(1): "Except as stated in Subsection (2), damages are not recoverable for loss that the injured party could have avoided without undue

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[34] As required by the Option Agreement, Paragraph 3.
[35] See First Amended Complaint, Paragraph 22.

risk, burden or humiliation."[36] The effect of a party's failure to make efforts to mitigate its damages is explained at comment b to § 350:

> b. Effect of failure to make efforts to mitigate damages. As a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts. Once a party has reason to know that performance by the other party will not be forthcoming, he is ordinarily expected to stop his own performance to avoid further expenditure. . . . Furthermore, he is expected to take such affirmative steps as are appropriate in the circumstances to avoid loss by making substitute arrangements or otherwise. It is sometimes said that it is the "duty" of the aggrieved party to mitigate damages, but this is misleading because he incurs no liability for his failure to act. The amount of loss that he could reasonably have avoided by stopping performance, making substitute arrangements or otherwise is simply subtracted from the amount that would otherwise have been recoverable as damages.

Restatement (Second) Contracts § 350 cmt. b.

20. Had Michaels exercised its option on or before August 1, 1996, then it would have gotten the benefit of any purported bargain it had made. Its failure to exercise its option on or before August 1, 1996 precludes any award of damages.

Conclusion

In sum the Court finds as follows:

1. The Option Agreement, read together with the two written extensions, expired on August 1, 1996;

2. Michaels failed to properly extend its option beyond August 1, 1996;

3. Michaels failed to mitigate damages by exercising its option on or before August 1,

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[36] Subsection 2 of § 350 provides: "The injured party is not precluded from recovery by the rule stated in Subsection (1) to the extent that he has made reasonable but unsuccessful efforts to avoid loss." Restatement (Second) Contracts § 350(2).

1996; and

4. Michaels is not entitled to an award of damages.

Judgment will be entered accordingly.

ENTER:

DATED: January ____, 2001

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:
Wilfredo F. Morales
Clerk of Court
by: _____
Deputy Clerk

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

CARLTON-MICHAELS CORP.,	)	
	)	
Plaintiff,	)	
	)	CIVIL NO. 1997-55
v.	)	
	)	
PAX HOLDINGS, INC.,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Pursuant to this Court's Findings of Fact and Conclusions of Law, it is hereby

ORDERED that judgment be entered in favor of Defendant PAX Holdings, Inc..

ENTER:

DATED: January ____, 2001

_____
RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:
Wilfredo F. Morales
Clerk of Court
by: _____
Deputy Clerk

cc: Douglas A. Brady, Esq.
Warren B. Cole, Esq.
The Honorable Jeffrey L. Resnick, U.S. Magistrate Judge